

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF ADMINISTRATION

In the Matter of the Appeal of the
Determination of the responsible authority
for Independent School District No. 2580,
East Central, that Certain Data about
Jeanne Slama are Accurate and/or
Complete, on Remand

**ORDER ON DISCOVERY AND
SCHEDULING**

The above-entitled matter is before Administrative Law Judge Steve Mihalchick on the November 18, 2004, request of Petitioner Jeanne Slama to allow certain discovery by a date to be established and to set a hearing date. The Responsible Authority for Independent School District No. 2580, East Central (the Responsible Authority) did not file a response.

Dale G. Swanson, Attorney at Law, 407 West Broadway Avenue, Forest Lake, MN 55025, represents Petitioner. Nancy E. Blumstein, Ratwik, Rozak & Maloney, P.A., 300 U.S. Trust Building, 730 Second Avenue South, Minneapolis, MN 55402, represents the Responsible Authority.

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. Petitioner's motion to be allowed to depose former Superintendent John Cambronne, the Student, Patricia Olson, Diana Naylor is **GRANTED**. Subpoenas for depositions of the four witnesses are enclosed with this Order.
2. The foregoing depositions shall be completed by January 7, 2005.
3. The hearing in this matter shall be held commencing January 31, 2005, at 10:00 a.m. at East Central Senior High School, Sandstone, Minnesota. The hearing shall continue on February 1, 2005, if necessary. Counsel for the Responsible Authority shall arrange for an appropriate room for the hearing and advise the Administrative Law Judge and Petitioner's counsel of that location. The High School has been chosen as the site for hearing because it will allow the Administrative Law Judge to view the locations at issue in this matter.

4. The hearing will be recorded by tape recorder. If any party desires the hearing to be reported by court reporter, they must contact Sandra Haven at 612-341-7642.

Dated this 7th day of December, 2004.

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

By Order of April 26, 2004, the Commissioner of Administration remanded this matter to the Administrative Law Judge. The Commissioner concluded that whether the alleged confrontation between the Student and Petitioner occurred was a material fact at issue that precluded summary disposition. Specifically, the Commissioner remanded the matter to address the following issues:

1. Are the student's allegations true?
2. How can there be an angry confrontation in a hallway outside of classrooms during class time that no one heard?
3. How can there be an angry confrontation in a hallway outside of classrooms during class time when attendance records show the student in class and not tardy?
4. Is the petitioner's response to the allegations true.

The Commissioner also concluded that if the confrontation did not occur, the appropriate remedy would be to destroy the January 30, 2003, letter at issue here and the subsequent revision of the letter.

On May 4, 2004, the Administrative Law Judge wrote counsel setting up a prehearing conference for May 18, 2004, to schedule further discovery and the hearing. That was rescheduled to June 4, then to July 14, at the request of the parties to allow time for negotiations. At the prehearing conference on July 14, 2004, both parties reported that their negotiations were going well, particularly in light of the change of Superintendent of the School District. They requested that no hearing be scheduled and agreed to report the status of their negotiations by August 16, 2004.

Neither party reported their status to the Administrative Law Judge. On September 16, 2004, the Administrative Law Judge reached Mr. Swanson, who reported that he thought an understanding had been reached a few weeks earlier that the letter would be expunged. He suggested that the School District be allowed a little

more time to finalize the agreement. On September 17, 2004, the Administrative Law Judge reached Ms. Blumstein. She agreed with Mr. Swanson's statements and said the appropriate letter had been written. She stated she would send something to the Administrative Law Judge soon.

On November 18, 2004, Petitioner's counsel wrote the Administrative Law Judge stating that "the School District and its legal counsel appear ready to maintain their lack of professional or even common courtesy in bringing a conclusion to the unlawful and immoral positions and actions taken respecting Jeanne Slama and her family." He requested that he be allowed to conduct the depositions he had previously requested and that a hearing date be set. The School District has not responded to Petitioner's request.

The persons Petitioner desires to depose may have some evidence as to whether the confrontation occurred or could have occurred. Such evidence is relevant and discoverable. Depositions of these persons are appropriate means of discovering that evidence, or a lack thereof. The Administrative Law Judge had previously denied allowing Petitioner to depose the Student for two reasons. First, and primarily, to protect this unrepresented young person from being mistreated and intimidated by Petitioner's counsel, a skilled and aggressive trial lawyer. It is clear that there is long-standing and deep-seated personal animosity between Petitioner and the Student, and other family members. A deposition can be used to attack a person personally, especially when they are young and unrepresented. Secondly, the Administrative Law Judge believed that the Student's deposition was not relevant at the summary disposition stage because he believed the issue of whether the confrontation occurred was not a material issue. Since the Commissioner has now determined it is material, discovery of her likely testimony is particularly important. Thus, it is appropriate to allow her deposition. The Administrative Law Judge assumes that the deposition will be conducted professionally.

The delays and failure to respond by counsel for the School District appear to be unprofessional and are disturbing to the Administrative Law Judge as well as to Petitioner and counsel.

S.M.M.